

AMENDED IN ASSEMBLY APRIL 3, 2000

CALIFORNIA LEGISLATURE—1999–2000 REGULAR SESSION

ASSEMBLY BILL

No. 2610

**Introduced by Assembly Member Rod Pacheco and Senator
Murray**

February 25, 2000

An act to amend ~~Section 11379.6~~ *Sections 11352, 11352.5, 11353.4, 11353.6, 11354, and 11379* of the Health and Safety Code, relating to crimes.

LEGISLATIVE COUNSEL'S DIGEST

AB 2610, as amended, Rod Pacheco. Crimes: *Drug offenders: sale of heroin, cocaine, cocaine base, and methamphetamine.*

Existing law provides criminal penalties for those who violate the drug laws of this state.

This bill would provide that it is the intent of the Legislature to reform the way in which the State of California sentences drug law violators.

Existing law, the Uniform Controlled Substances Act, classifies controlled substances into 5 schedules and places the greatest restrictions and highest penalties on those substances in Schedule I. Existing law classifies cocaine base and heroin as Schedule I controlled substances and cocaine and methamphetamine as Schedule II controlled substances. The penalty for the sale of these controlled substances is not the same under existing law.

This bill would make the penalties for the sale of cocaine, cocaine base, heroin, and methamphetamine the same. By increasing the penalties for existing offenses, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

~~Existing law makes it a crime to manufacture, compound, convert, produce, derive, process, or prepare, either directly or indirectly by chemical extraction or independently by means of chemical synthesis, specified controlled substances.~~

~~Existing law also makes it a crime to offer to perform any of the aforementioned acts as specified.~~

~~This bill would make technical, nonsubstantive changes to existing law.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~ yes. State-mandated local program: ~~no~~ yes.

The people of the State of California do enact as follows:

1 ~~SECTION 1. Section 11379.6 of the Health and Safety~~
2 *SECTION 1. It is the intent of the Legislature to*
3 *reform the way in which the State of California sentences*
4 *drug law violators.*
5 *SEC. 2. Section 11352 of the Health and Safety Code*
6 *is amended to read:*
7 11352. (a) Except as otherwise provided in this
8 ~~division~~ *subdivision*, every person who transports,
9 imports into this state, sells, furnishes, administers, or
10 gives away, or offers to transport, import into this state,
11 sell, furnish, administer, or give away, or attempts to
12 import into this state or transport (1) any controlled
13 substance specified in subdivision (b), (c), or (e), or
14 paragraph (1) of subdivision (f) of Section 11054,
15 specified in paragraph (14), (15), or (20) of subdivision
16 (d) of Section 11054, or specified in subdivision (b), (c),
17 or (g) of Section 11055, *or specified in paragraph (2) of*

1 *subdivision (d) of Section 11055*, or (2) any controlled
2 substance classified in Schedule III, IV, or V which is a
3 narcotic drug, unless upon the written prescription of a
4 physician, dentist, podiatrist, or veterinarian licensed to
5 practice in this state, shall be punished by imprisonment
6 in the state prison for three, four, or five years.

7 (b) Notwithstanding the penalty provisions of
8 subdivision (a), any person who transports for sale any
9 controlled substances specified in subdivision (a) within
10 this state from one county to another noncontiguous
11 county shall be punished by imprisonment in the state
12 prison for three, six, or nine years.

13 *SEC. 3. Section 11352.5 of the Health and Safety Code*
14 *is amended to read:*

15 11352.5. The court shall impose a fine not exceeding
16 fifty thousand dollars (\$50,000), in the absence of a
17 finding that the defendant would be incapable of paying
18 such a fine, in addition to any term of imprisonment
19 provided by law for any of the following persons:

20 (1) Any person who is convicted of violating Section
21 11351 of the Health and Safety Code by possessing for sale
22 14.25 grams or more of a substance containing heroin.

23 (2) Any person who is convicted of violating Section
24 11352 of the Health and Safety Code by selling or offering
25 to sell 14.25 grams or more of a substance containing
26 heroin, *cocaine base, cocaine, or methamphetamine*.

27 (3) Any person convicted of violating Section 11351 of
28 the Health and Safety Code by possessing heroin for sale
29 or convicted of violating Section 11352 of the Health and
30 Safety Code by selling or offering to sell heroin, *cocaine*
31 *base, cocaine, or methamphetamine*, and who has one or
32 more prior convictions for violating Section 11351 or
33 Section 11352 of the Health and Safety Code.

34 *SEC. 4. Section 11353.4 of the Health and Safety Code*
35 *is amended to read:*

36 11353.4. (a) Any person 18 years of age or older who
37 is convicted for a second or subsequent time of violating
38 Section 11353 or 11380, ~~as that section applies those~~
39 ~~sections apply~~ to *paragraph (1) of subdivision (c) or*
40 *paragraph (1) of subdivision (f), of Section 11054, or*

1 *paragraph (6) of subdivision (b) or paragraph (2) of*
2 *subdivision (d), of Section 11055,* where the previous
3 conviction resulted in a prison sentence, shall, as a full and
4 separately served enhancement to the punishment
5 imposed for that second or subsequent conviction of
6 Section 11353 *or 11380,* be punished by imprisonment in
7 the state prison for one, two, or three years.

8 (b) If the second or subsequent violation of Section
9 11353 *or 11380,* as described in subdivision (a), involved
10 a minor who is 14 years of age or younger, the defendant
11 shall, as a full and separately served enhancement to any
12 other enhancement provided in this section, be punished
13 by imprisonment in the state prison for one, two, or three
14 years, at the discretion of the court.

15 (c) The additional punishment provided in this
16 section shall not be imposed unless the allegation is
17 charged in the accusatory pleading and admitted by the
18 defendant or found to be true by the trier of fact.

19 (d) The additional punishment provided in this
20 section shall be in addition to any other punishment
21 provided by law and shall not be limited by any other
22 provision of law.

23 (e) Notwithstanding any other provision of law, the
24 court may strike the additional punishment provided for
25 in this section if it determines that there are
26 circumstances in mitigation of the additional punishment
27 and states on the record its reasons for striking the
28 additional punishment.

29 *SEC. 5. Section 11353.6 of the Health and Safety Code*
30 *is amended to read:*

31 11353.6. (a) This section shall be known, and may be
32 cited, as the Juvenile Drug Trafficking and Schoolyard
33 Act of 1988.

34 (b) Any person 18 years of age or over who is convicted
35 of a violation of Section 11351, 11351.5, 11352, or 11379.6,
36 as those sections apply to paragraph (1) of subdivision (f)
37 of Section 11054, ~~or of Section 11351, 11352, or 11379.6, as~~
38 ~~those sections apply to~~ paragraph (11) of subdivision (c)
39 of Section 11054, ~~or of Section 11378, 11379, or 11379.6, as~~
40 ~~those sections apply to~~ paragraph (6) of subdivision (b)

1 of Section 11055, or paragraph (2) of subdivision (d) of
2 Section 11055, or of a conspiracy to commit one of those
3 offenses, where the violation takes place upon the
4 grounds of, or within 1,000 feet of, a public or private
5 elementary, vocational, junior high, or high school during
6 hours that the school is open for classes or school-related
7 programs, or at any time when minors are using the
8 facility where the offense occurs, shall receive an
9 additional punishment of 3, 4, or 5 years at the court's
10 discretion.

11 (c) Any person 18 years of age or older who is
12 convicted of a violation pursuant to subdivision (b) which
13 involves a minor who is at least four years younger than
14 that person, as a full and separately served enhancement
15 to that provided in subdivision (b), shall be punished by
16 imprisonment in the state prison for 3, 4, or 5 years at the
17 court's discretion.

18 (d) The additional terms provided in this section shall
19 not be imposed unless the allegation is charged in the
20 accusatory pleading and admitted or found to be true by
21 the trier of fact.

22 (e) The additional terms provided in this section shall
23 be in addition to any other punishment provided by law
24 and shall not be limited by any other provision of law.

25 (f) Notwithstanding any other provision of law, the
26 court may strike the additional punishment for the
27 enhancements provided in this section if it determines
28 that there are circumstances in mitigation of the
29 additional punishment and states on the record its reasons
30 for striking the additional punishment.

31 (g) "Within 1,000 feet of a public or private
32 elementary, vocational, junior high, or high school"
33 means any public area or business establishment where
34 minors are legally permitted to conduct business which
35 is located within 1,000 feet of any public or private
36 elementary, vocational, junior high, or high school.

37 SEC. 6. Section 11354 of the Health and Safety Code
38 is amended to read:

39 11354. (a) Every person under the age of 18 years
40 who in any voluntary manner solicits, induces,

1 encourages, or intimidates any minor with the intent that
2 the minor shall violate any provision of this chapter or
3 Section 11550, who hires, employs, or uses a minor to
4 unlawfully transport, carry, sell, give away, prepare for
5 sale, or peddle (1) any controlled substance specified in
6 subdivision (b), (c), or (e), or paragraph (1) of
7 subdivision (f) of Section 11054, specified in paragraph
8 (14), (15), or (20) of subdivision (d) of Section 11054, or
9 specified in subdivision (b), (c), or (g) of Section 11055,
10 *or specified in paragraph (2) of subdivision (d) of Section*
11 *11055*, or (2) any controlled substance classified in
12 Schedule III, IV, or V which is a narcotic drug, or who
13 unlawfully sells, furnishes, administers, gives, or offers to
14 sell, furnish, administer, or give, any such controlled
15 substance to a minor shall be punished by imprisonment
16 in the state prison.

17 (b) This section is not intended to affect the
18 jurisdiction of the juvenile court.

19 *SEC. 7. Section 11379 of the Health and Safety Code*
20 *is amended to read:*

21 11379. (a) Except as otherwise provided in
22 subdivision (b) and in Article 7 (commencing with
23 Section 4211) of Chapter 9 of Division 2 of the Business
24 and Professions Code, every person who transports,
25 imports into this state, sells, furnishes, administers, or
26 gives away, or offers to transport, import into this state,
27 sell, furnish, administer, or give away, or attempts to
28 import into this state or transport any controlled
29 substance which is (1) classified in Schedule III, IV, or V
30 and which is not a narcotic drug, except subdivision (g)
31 of Section 11056, (2) specified in subdivision (d) of
32 Section 11054, except paragraphs (13), (14), (15), (20),
33 (21), (22), and (23) of subdivision (d), (3) specified in
34 paragraph (2) or (3) of subdivision (f) of Section 11054,
35 or (4) specified in subdivision (d) or (e), except
36 *paragraph (2) of subdivision (d) or paragraph (3) of*
37 *subdivision (e), or specified in subparagraph (A) of*
38 *paragraph (1) of subdivision (f), of Section 11055*, unless
39 upon the prescription of a physician, dentist, podiatrist, or
40 veterinarian, licensed to practice in this state, shall be

1 punished by imprisonment in the state prison for a period
2 of two, three, or four years.

3 (b) Notwithstanding the penalty provisions of
4 subdivision (a), any person who transports for sale any
5 controlled substances specified in subdivision (a) within
6 this state from one county to another noncontiguous
7 county shall be punished by imprisonment in the state
8 prison for three, six, or nine years.

9 *SEC. 8. No reimbursement is required by this act*
10 *pursuant to Section 6 of Article XIII B of the California*
11 *Constitution because the only costs that may be incurred*
12 *by a local agency or school district will be incurred*
13 *because this act creates a new crime or infraction,*
14 *eliminates a crime or infraction, or changes the penalty*
15 *for a crime or infraction, within the meaning of Section*
16 *17556 of the Government Code, or changes the definition*
17 *of a crime within the meaning of Section 6 of Article*
18 *XIII B of the California Constitution.*

19 ~~Code is amended to read:~~

20 ~~11379.6. (a) Except as otherwise provided by law,~~
21 ~~every person who manufactures, compounds, converts,~~
22 ~~produces, derives, processes, or prepares, either directly~~
23 ~~or indirectly by chemical extraction or independently by~~
24 ~~means of chemical synthesis, any controlled substance~~
25 ~~specified in Section 11054, 11055, 11056, 11057, or 11058~~
26 ~~shall be punished by imprisonment in the state prison for~~
27 ~~three, five, or seven years and by a fine not exceeding fifty~~
28 ~~thousand dollars (\$50,000).~~

29 ~~(b) Except as otherwise provided by law, every person~~
30 ~~who offers to perform an act that is punishable under~~
31 ~~subdivision (a) shall be punished by imprisonment in the~~
32 ~~state prison for three, four, or five years.~~

33 ~~(c) All fines collected pursuant to subdivision (a) shall~~
34 ~~be transferred to the State Treasury for deposit in the~~
35 ~~Clandestine Drug Lab Clean-up Account, as established~~
36 ~~by Section 5 of Chapter 1295 of the Statutes of 1987. The~~
37 ~~transmission to the State Treasury shall be carried out in~~

1 ~~the same manner as fines collected for the state by the~~
2 ~~county.~~

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